IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2081 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIRDAUS @ TOLA SABBIRBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

#. The petitioner - Firdaus @ Tota Sabbirbhai Solanki (Musalman) has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Banaskantha at Palanpur, in exercise of powers under Section 3(1) of the PASA Act, dated

August 28, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration two offences registered against the petitioner. The detaining authority also took into consideration the statements of four anonymous witnesses in respects of the incidents that occurred on August 16, 1999 and August 21, 1999 and came to conclusion that the petitioner is a "bootlegger", that activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses. The detaining authority considered the possibility of resorting to externment under section 56/57 of the Bombay Police Act while considering the less drastic remedy. The authority observed that after getting bailed out, the petitioner may engage himself in such illegal anti-social activities.

#. The petitioner has challenged this order of detention on various counts. However, Mr. Barejia, learned advocate for the petitioner has restricted his arguments to the fact that the detaining authority has passed order of detention while the detenue was in judicial custody and no compelling reasons are shown for passing such order. The subjective satisfaction for immediately detaining the petitioner is, therefore, not genuine. He submitted further that the order is based on extraneous and irrelevant considerations namely, consideration of section 57 of the Bombay Police Act wherein minimum three convictions under the Pombay Prohibition Act are required for externing the petitioner which are non-existent. He, therefore, submitted that therefore, there was no scope for the detenue to pursue his alleged illegal activity immediately.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Having regard to the rival side contentions, close reading of the grounds of detention indicates that the detaining authority was aware about the fact that the detenue is in judicial custody. The detaining authority has not assigned any reasons leave aside the compelling reasons for passing the order of detention while the detenue was in judicial custody and there was, as such, no scope for him to pursue his alleged illegal and anti-social activities immediately. The order of detention, therefore, is bad in law as held in the case

of Sanjeev Kumar Aggarwal v. Union of India, AIR 1990 SC 1202.

#. The order cannot be supported also for the reason that the detaining authority has taken into consideration the possibility of resorting to proceedings under section 57 of the Bombay Police Act and there are only two offences registered against the detenue, one of which is pending trial and the other is pending investigation. There is no allegation that there were earlier convictions of the detenue. Under the circumstances, in the absence of any convictions, there was no question of considering the possibility of resorting to proceedings under section 57 of the Bombay Police Act. Consideration of this provision by the detaining authority indicates that the authority has considered relevant and extraneous material reflecting non-application of mind which would vitiate the order of detention. In this regard, the decision in the case of Bhupatbhai R. Vasava v. District Magistrate, Bharuch, 1992 (2) GLH 350 can be profitably be used. Therefore, the petition deserves to be allowed.

#. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated August 28, 1999 is hereby quashed and set aside. The detenue-Firdaus @ Tota Sabbirbhai Solanki (Musalman) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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